

HUMAN DIMENSION IMPLEMENTATION MEETING
22 September to 3 October 2014
Warsaw, Poland

Rapporteur's report
Wednesday, 24 September 2014

Working session 4: Rule of law I

Rapporteur: Mr. Paul Welsh, United Kingdom Delegation to the OSCE

No. of statements:

Delegations: 14

Civil Society: 25

OSCE Inst./Int'l Org: 2

Rights of Reply: 12

Working session 4 addressed the issues of torture prevention, human rights in the fight against terrorism and the abolition of capital punishment.

The First Deputy Director of ODIHR, Ms. Beatriz Balbin recalled that participating States are under an obligation to protect human rights while countering terrorism. However, some participating States continue to implement security measures that undermine human rights including in their responses to issues such as the emergence of “foreign fighters”. Ms. Balbin noted that all participating States have committed to prohibit torture and other cruel, inhuman and degrading treatment. This year’s Supplementary Human Dimension Meeting on Torture Prevention had taken stock of important progress since the topic was last addressed through such a meeting in 2003. But much remained to be done including the need to ensure prompt, effective and impartial investigations. Genuine political will was needed for these efforts to succeed. The First Deputy Director drew attention to the recently released ODIHR background paper on the death penalty, the aim of which is to increase transparency in the application of the death penalty and promote compliance with international standards on the imposition of capital punishment.

The introducer, Mr. Gerald Staberock described the three themes under discussion as being interrelated. In relation to torture prevention, he felt that participating States should adopt an ambitious agenda, pursuing not only legal measures aimed at prevention but seeking torture’s total eradication. A holistic approach was needed encompassing the full integration of international standards into domestic frameworks alongside a dedicated commitment to implement UN Committee against Torture recommendations. The needs of the victim must remain at the centre of states’ responses and should include rehabilitation and reparation. Whilst noting the importance of fully independent and properly resourced National Preventive

Mechanisms, Mr. Starberock noted that accountability for perpetrators was also a necessary precondition for torture prevention. It was important to build a wide constituency for reforming anti-torture efforts; this needed to include public outreach and civil society engagement. He recommended that a contact point on torture issues should be established within the OSCE preferably in ODIHR. In relation to countering terrorism, the introducer stressed the importance of an approach based on the rule of law and full compliance with human rights standards. Human Rights protection should be an active component of counter-terrorism measures not simply a limiting factor. States should not make distinctions between the victims of torture. Mr. Staberock highlighted the link between the death penalty and the absolute prohibition of torture, there was a need to reform long-term detention including for inmates detained on death-row.

In the subsequent discussion, a number of speakers welcomed the Swiss Chairmanship's focus on torture prevention including the holding of a Supplementary Human Dimension Meeting earlier this year. Speakers noted that prohibition of torture is absolute and that torture could never be justified. There was a call in many interventions for participating States to sign and ratify all international conventions and protocols relating to torture. It was also stressed that the adoption of legal instruments alone was not enough. Implementation was key and several speakers called for a holistic approach to anti-torture measures including rehabilitation for victims and accountability for perpetrators including law enforcement personnel. The need for thorough documentation of allegations, proper investigation, the active involvement of civil society, the development of national strategies, the establishment of independent National Preventive Mechanisms, the use of universal jurisdiction to prosecute cases and cooperation between international organisations were all highlighted as effective measures. It was noted that human rights defenders, long-term detainees and political prisoners were often particularly vulnerable to torture and mistreatment. Several speakers drew attention to the issue of Enforced Disappearances as a persistent practice that often led to torture. They recalled the 1992 Declaration on Enforced Disappearances and called for the issue to be addressed. Several speakers cited specific examples of alleged cases of torture in their own and other participating States and called for them to be urgently investigated.

Whilst a number of speakers recognised that protecting citizens was amongst a state's primary and most important obligation, this did not justify the violation of human rights. Human Rights protection and the fight against terrorism should be complementary and mutually reinforcing. Respect for the rule of law should be fully promoted. A number of examples where it was not apparent that this had happened were highlighted including the alleged targeting of civilians in terrorist operations, the use of illegal rendition programmes, intrusive electronic surveillance and the use of drones.

Many speakers called for the abolition of the death penalty or for a global moratorium. The lack of any evidence that its use had any deterrent effect, the risk of miscarriage of justice, the traumatic impact on family members of those sentenced, wrongful conviction and the killing of innocent persons were all cited as arguments to support such moves.

To OSCE participating States:

- Take appropriate action to ensure the respect for human rights and the upholding of the Rule of Law;
- Abolish the death penalty;
- Establish National Preventive Mechanisms.
- Adopt commitments on the issue of enforced disappearance;
- Sign, ratify and implement the Convention Against Torture and its Optional Protocol.
- Ensure that allegations of torture are thoroughly investigated and when necessary prosecuted;
- Support the strengthening of civil society capacity to monitor torture allegations;
- Consider developing national torture prevention strategies;
- Ensure accountability for human rights violations occurring as a result of the rendition programme;
- Support a moratorium on the death penalty;
- Sign and ratify the 1992 UN Declaration on the Protection of All Persons from Enforced Disappearance;
- Those that have acceded to OPCAT should enhance cooperation at the international level with relevant international bodies and institutions with a view to improving the relevant provisions of the Optional Protocol;
- Provide response to the ODIHR questionnaire on the death penalty.

To OSCE institutions and Field Operations:

- ODIHR and OSCE Field Operations should systematically convene civil society and governments' representatives to discuss effective implementation of UNCAT's provisions as well as of the Committee Against Torture's recommendations;
- Adopt a victim-centred approach in any activity on torture and torture prevention;
- OSCE and ODIHR should promote activities in the areas of accountability for torture acts;
- Develop a new agenda on torture eradication;
- Establish within the framework of OSCE institutions (possibly ODIHR) a contact point on torture.
- Assess alleged kidnapping cases in the context of the recent security crisis affecting the OSCE.
- Create a working group on foreign fighters;
- Assist participating States in adopting universal jurisdiction as a legal basis to prosecute torture-related crimes;
- ODIHR should elaborate guidelines on the torture and ill-treatment;
- ODIHR should launch a project aimed at monitoring places of detention in the OSCE area.